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ATTORNEYS FOR HOLT TEXAS, LTD. d/b/a HOLT CAT

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	CASE NO. 11-31195-sgj
	§	
NORTH TEXAS ROCK AND SAND, LTD.	§	(Chapter 11)
	§	
	§	Hearing Date: <i>March 24, 2011</i>
Debtor.	§	Hearing Time: <i>1:30 p.m.</i>

**MOTION OF HOLT TEXAS, LTD. d/b/a HOLT CAT
FOR RELIEF OF AUTOMATIC STAY**

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, DALLAS, TEXAS 75242 BEFORE CLOSE OF BUSINESS ON MARCH 11, 2011, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

HOLT TEXAS, LTD., d/b/a HOLT CAT (“HOLT CAT”), by and through its undersigned counsel, respectfully moves the Court for an Order of Relief from the Automatic Stay imposed by Section 362 of the United States Bankruptcy Code with respect to a CATERPILLAR MODEL 966H WHEEL LOADER, Serial Number A6D02492, its Engine and other component parts (the “Caterpillar”). In support of this Motion, HOLT CAT would respectfully show the Court as follows:

I. **INTRODUCTION**

1. On February 24, 2011 (the “Petition Date”), North Texas Rock and Sand, Ltd. (“the Debtor”) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

2. Pursuant to Section 1107 of the Bankruptcy Code, the Debtor continues to operate his business and manage the Debtors affairs and assets. No Chapter 11 Trustee has been assigned herein.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

II. **BACKGROUND**

4. On April 24, 2010, the Debtor executed a Long Term Rental Agreement with Holt Texas, Ltd. d/b/a Holt Cat (“Holt Cat”) for the long term rental of Caterpillar Model 966H Wheel Loader, Serial Number A6D02492, its Engine and other component parts (the “Caterpillar”). Pursuant to the terms of the Long Term Rental Agreement, the Debtor agreed to pay and became bound and obligated to pay Plaintiff \$6,075.75 per month for rental of the Caterpillar. Debtor breached the terms of the Rental Agreement by failing to make the monthly rental payments for September 2010 through the date of the filing of Debtors

Voluntary Petition. Demand was made upon Debtor to return the Caterpillar, but Debtor failed and refused to do so. Holt Cat believes that Debtor is using the Caterpillar and that such Caterpillar is depreciating in value in the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492. Debtor has failed to prove that it is carrying insurance on the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492.

5. On February 24, 2011 HOLT CAT filed a State Court lawsuit against the Debtor in the 191st Judicial District Court, Dallas County, Texas being Cause No. 11-02042. On February 24, 2011 an Order for Sequestration was entered in the State Court case. Prior to Holt Cat taking possession of the Caterpillar, Debtor filed for Chapter 11 Bankruptcy protection.

6. As of this date, the Debtor still owes the sum of \$36,382.50 plus accrued interest from September 1, 2010 to date.

III. **REQUEST FOR RELIEF OF STAY PROTECTION**

7. The Debtor has no equity in the Equipment and the same is not necessary for an effective reorganization.

8. HOLT CAT lacks adequate protection because the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492 that is in the possession of the Debtor is probably not insured against any loss.

9. The Debtor in all probability filed this Chapter 11 bankruptcy merely to prevent HOLT CAT from taking possession of the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492 through the Order for Sequestration issued on February 24, 2011.

10. As a result of the above and foregoing, cause exists for immediate termination of the automatic stay and to permit HOLT CAT to take possession of the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492.

IV.

11. The Debtor has no a limited reasonable prospect for a successful Chapter 11 Plan.

V.

12. HOLT CAT has no remedy other than to seek relief from this automatic stay so that it may take possession of the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492.

WHEREFORE, PREMISES CONSIDERED, **HOLT TEXAS, LTD. d/b/a HOLT CAT** prays for an Order terminating the Automatic Stay so as to permit it to take possession of the Caterpillar Model 966H Wheel Loader, Serial Number A6D02492 pursuant to the Order of Sequestration issued on February 24, 2011, Cause No. 11-02042, in the 191st Judicial District Court, Dallas County, Texas. HOLT TEXAS, LTD. d/b/a HOLT CAT further prays for such other and further relief as is just.

Respectfully submitted,

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By: /s/ Dewey M. Dalton
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Of Counsel
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Laura A. Worsham
State Bar No. 22008050

ATTORNEYS FOR HOLT TEXAS, LTD.
d/b/a HOLT CAT

CERTIFICATE OF CONFERENCE

I hereby certify that on February 24, 2011, I contacted the Debtor through his counsel of record. Counsel for Debtor is not in agreement of this motion.

/s/ Dewey M. Dalton

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion of HOLT TEXAS, LTD., d/b/a HOLT CAT for Relief from Automatic Stay has been sent to the following on this 25th day of February, 2011:

U.S. Trustee
1100 Commerce Street
Room 976
Dallas, TX 75242-1496
By Notice of Electronic Filing

Richard G. Dafoe
Counsel for Debtor
Vincent, Lopez, Serafino & Jenevein
1601 Elm Street, Suite 4100
Dallas, TX 75201
By Notice of Electronic Filing

North Texas Rock and Sand, Ltd.
Debtor
8908 Ambassador Row
Dallas, TX 75247
First Class Mail

and upon the parties shown on the attached Matrix by first class mail.

/s/ Dewey M. Dalton
Dewey M. Dalton